



JUL - 9 2013

Ms. Dorothy Robinson
Vice President and General Counsel
Yale University
2 Whitney Avenue
New Haven, CT 06510

Sent: United Parcel Service
Tracking #: 1Z A54 67Y 01 9856 9966
OPE-ID: 00142600

Dear Ms. Robinson:

On April 19, 2013, the U.S. Department of Education's (Department's) Federal Student Aid notified Yale University (Yale) of its intent to fine Yale \$165,000 for violations of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in §485(f) of the Higher Education Act of 1965, as amended (HEA). The proposed fine was based on the findings in a Final Program Review Determination (FPRD) issued on May 23, 2011. In a letter dated May 7, 2013, you submitted a written response to that fine notice on Yale's behalf and requested that the Department reconsider and lower the proposed fine. You specifically noted that Yale is not requesting a hearing on the proposed fine.

The Department has considered the arguments and facts presented in your letter. This letter provides the Department's final decision on Yale's request for a reconsideration of the proposed fine.

In our April 19, 2013, fine notification, the Department proposed to fine Yale a total of \$165,000 based on the following violations of the Clery Act:

1. Yale did not provide accurate crime statistics in its Annual Security Reports (ASRs) for 2001 and 2002. In particular, Yale did not include two reported forcible sex offenses in the campus crime statistics for 2001 and two additional reported forcible sex offenses in the campus crime statistics for 2002. We proposed to impose a fine of \$27,500 for each of the four forcible sex offenses not included in the campus crime statistics.
2. Yale did not properly define its campus for purposes of reporting crime statistics. In particular, Yale did not include certain spaces that it controlled and used in the Yale New Haven Hospital as campus property for Clery Act purposes. We proposed to impose a fine of \$27,500 for Yale's failure to properly define the campus for this purpose.

Federal Student Aid
AN OFFICE of the U.S. DEPARTMENT of EDUCATION

Administrative Actions and Appeals Service Group
830 First St., N.E. Washington, D.C. 20002-8019
StudentAid.gov

3. Yale's 2004 ASR did not include policy statements in seven areas in which the Clery Act requires institutions to publish its policies. We proposed to fine Yale \$27,500 for failing to publish these required policies.

In your letter, Yale asked the Department to reconsider the fines based on the violations discussed in numbers 1 and 3 above. Yale did not ask the Department to reconsider the fine based on the violations discussed in number 2. Therefore, we affirm the proposed fine of \$27,500 for Yale's failure to comply with the Clery Act and the Department's regulations in defining its campus for purposes of complying and disclosing campus crime statistics.

The remaining two violations are addressed below.

1. Failure to provide accurate crime statistics.

The FPRD concluded that Yale did not provide accurate crime statistics in its ASR. Yale did not collect the number of crimes reported to all campus security authorities (CSAs), including the Sexual Harassment Grievance Board (SHGB). A self-study by Yale concluded that four forcible sex offenses reported to the SHGB should have been included in the ASR. That conclusion was based on interviews of former SHGB members, but is not supported by any documentation.

In its response to the fine notification, Yale argued that its decision not to collect crime statistics from the SHGB during 2001 and 2002 was reasonable based on the regulations and guidance issued by the Department prior to that time.

Contrary to Yale's argument, however, the Department has consistently included campus counseling centers as CSAs. The Department's regulations specifically allow institutions to exclude from the statistics or not provide a timely warning for crimes reported to a pastoral or professional counselor. 34 CFR §668.46(c)(6) and (e)(2). The regulations have never provided a broad exemption for crimes reported within a counseling center, even to staff who are not pastoral or professional counselors. We also note that FPRDs issued by the Department in other cases involving periods before 2001 and 2002 concluded that institutions violated the Clery Act by not gathering crime statistics from campus counseling centers. See West Virginia Wesleyan College, FPRD, March 9, 2000; Morehead State University, FPRD, June 30, 1997 available at <http://studentaid.ed.gov/about/data-center/school/clery-act>.

In two recent decisions, the Secretary of Education has concluded that it is appropriate to impose the maximum fine if an institution fails to report a violent crime in its ASR. In the Matter of Washington State University, Dkt. No. 11-56-SF (Dec. of the Secretary and Order of Remand, Aug. 29, 2012); In the Matter of Tarleton State University, Dkt. No. 09-56-SF (Dec. of the Secretary and Order of Remand, June 1, 2012). In those decisions, the Secretary also upheld the imposition of the maximum fine for each such violent crime not included in the crime statistics. It is vital that institutions fully and accurately disclose the number of crimes on campus and the

Secretary has noted that the failure to do so is a serious offense. In this case, Yale did not include four forcible sex offenses in its ASR and we proposed the maximum fine of \$27,500 for each of the four offenses. Since the proposed fine amounts are consistent with the Secretary's earlier decisions, we are affirming those proposed fines.

2. Failure to include seven required policy statements in its 2004 ASR.

The FPRD found that Yale had failed to include seven required campus crime policy statements in its 2004 ASR. By failing to include these statements, Yale denied the campus community important information about its campus security policies and violated the Clery Act. Accordingly, we proposed to impose a fine of \$27,500 for this violation.

Yale acknowledges that it did not include the required information. In its response to the fine notice, however, Yale argues that a fine should not be imposed or the fine should be reduced because it provided corrected information in an addendum to its 2004 ASR issued in April 2005.

Yale has never explained why it did not include the required policy statements in its 2004 ASR. The disclosure of these policies was not a new requirement and Yale has not explained why they were not disclosed. We also note that Yale did not take any action to correct the error until it was identified by the Department and that the correction did not occur until close to the end of the 2004-2005 academic year, thereby limiting the value of the correction to students, employees and prospective students and employees.

However, the Department acknowledges that Yale did provide the required disclosures to its campus community once the violation was identified and that the 2010 review found that Yale was providing appropriate policy disclosures. Based on these factors and on the fact that this finding relates to policies included in the ASR for a period of almost eight years ago, we have decided to reduce the proposed fine to \$2,500 for each missing policy statement for a total of \$17,500.

Final Decision

For the reasons discussed above, the Department is affirming the proposed fine of \$27,500 for each of the four forcible sex offenses that were not included in Yale's campus crime statistics, and is imposing a fine of \$17,500 for Yale's failure to include required policy statements in its ASR. Yale did not request reconsideration of the fine of \$27,500 for its failure to properly define its campus for Clery Act purposes. Therefore, the Department imposes a total fine of \$155,000.

The \$155,000 fine is due to the Department within 30 days of the date of this letter. Payment must be in the form of a certified or cashier's check, and made payable to the U.S. Department of Education. If payment is not received by the Department within that 30-day

Ms. Dorothy Robinson, Vice President and General Counsel
Yale University
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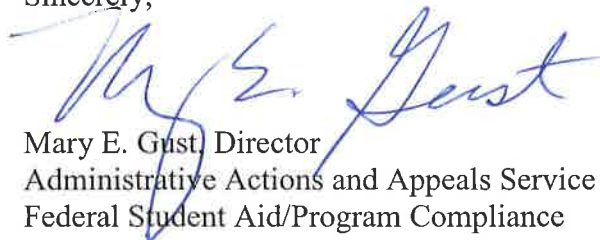
time period, interest will accrue in monthly increments until payment is received. Please send your fine payment to me at the following address:

Administrative Actions and Appeals Service Group
U.S. Department of Education
Federal Student Aid/Program Compliance
830 First Street, NE – UCP-3, Room 84F2
Washington, DC 20002-8019

Please identify the payment as Bill No. AAA201304021 to ensure proper crediting of your payment account.

If you have any questions about this letter, please contact Lawrence Mwethuku of my staff at 202/377-3684.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mary E. Gust", is written over the typed name and title.

Mary E. Gust, Director
Administrative Actions and Appeals Service Group
Federal Student Aid/Program Compliance
U.S. Department of Education

cc: Dr. Richard Levin, President, Yale
Dr. Barbara E. Brittingham, President, NEASC's Commission on Institutions of Higher Education (CIHE), via bbrittingham@neasc.org
Ms. Jane A. Ciarleglio, Executive Director, Office of Higher Education, Connecticut, via jciarleglio@ctohe.org